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First Named Applicant: Magid)	Art Unit: 2192
)	
Serial No.: 10/629,431)	Examiner: Pham
)	
Filed: July 29, 2003)	SVL920030039US1
)	
For: SYSTEM AND METHOD FOR INTERCEPTING)	May 23, 2007
USER EXIT INTERFACES IN IMS PROGRAMS)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) **Real Party in Interest**

The real party in interest is IBM Corp.

(2) **Related Appeals/Interferences**

No other appeals or interferences exist which relate to the present application or appeal.

(3) **Status of Claims**

Claims 1 and 5-30 are pending and twice rejected, which rejections are appealed, and claims 2-4 have been canceled.

(4) **Status of Amendments**

No amendments are outstanding.

(5) **Summary of Claimed Subject Matter**

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 recites a method for intercepting user exit interfaces in IMS programs that includes installing a program library at an Information Management System (IMS) system server (12, figure 1; page 4, line 3) as the first library in an IMS program library concatenation (page 5, last paragraph). The program library

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includes an interception routine (20, figure 1; page 4, line 9). The method includes dynamically loading an interface routine (18, figure 1; page 4, line 7) at the IMS system server. The interception routine communicates with the interface routine to resolve name ambiguity and enable simultaneous use of a single exit by plural users (page 7, first full paragraph). The method of Claim 1 also includes passing control from an IMS program at the IMS system server to the interface routine, receiving control at the interception routine from the IMS program, and establishing the interception routine as a user exit routine (last line of page 6 through first two lines of page 7).

Claim 11 sets forth a system for intercepting user exist interfaces in IMS programs that includes an IMS system server (12, figure 1; page 4, line 3), a user computer (26, figure 1; page 4, line 13) communicating with the IMS system server, and an interface routine (18, figure 1; page 4, line 7) residing in the IMS system server. An interception routine (20, figure 1; page 4, line 9) resides in the IMS system server, and the interface routine and the interception routine include logic means (code structure of figures 2 and 3 as generally described at the last three lines of page 4 continuing through the first full paragraph of page 5) communicating between the interface routine and the interception routine to resolve name ambiguity and enable simultaneous use of a single exit by plural users (page 7, first full paragraph).

Claim 21 recites a computer program device (bottom of page 4, last three lines) for intercepting user exit interfaces in IMS programs that includes logic means (code structure of figures 2 and 3 as generally described at the last three lines of page 4 continuing through the first full paragraph of page 5) for communicating between an interception routine (20, figure 1; page 4, line 9) and an interface routine (18, figure 1; page 4, line 7) to resolve name ambiguity and enable simultaneous use of a single exit by plural users (page 7, first full paragraph).

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(6) Grounds of Rejection to be Reviewed on Appeal

(a) Independent Claims 1, 11, and 21 and dependent Claims 12-14 and 22-24 have been rejected under 35 U.S.C. §103 as being unpatentable over Fortin, USPN 5,528,753 in view of Baer et al., USPN 6,035,303.

(b) Dependent Claims 5-10, 15-20, and 25-30 have been rejected under 35 U.S.C. §103 as being unpatentable over Fortin in view of Baer et al. and Chan et al., USPN 6,460,178.

(c) Claims 21-30 have been rejected under 35 U.S.C. §101 for being non-statutory.

(7) Argument

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Applicant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, *id.*, page 49979.

a(1). Obviousness Rejections, Claim 1

Fortin is directed to a method for monitoring software programs. Monitoring is a very different thing from the focus of the present independent claims, which seek to address contention for a single exit interface within an IMS system. The claimed IMS system allows only a single instance of a given exit interface to

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enhance the function of the system and user software. In marked contrast, it appears that the exit routine mentioned in Fortin is for the purposes of collecting performance statistics, rather than for any purpose for which a user chooses to adapt and customize the system. It is believed that the gravamen of this distinction is contained in the independent claims.

With greater specificity as to Fortin, Fortin modifies the "target" software to receive control before and after target execution. With the presently claimed combination of features, no preexisting software need be modified other than the calling sequence of the "target" exits, to thereby transparently expand this single interface to multiple users without modification to any system or user code. Other than Fortin intercepting from a caller and receiving control back from the target, there is no commonality between the present claims and Fortin.

These distinctions, made in a good faith effort to illuminate the differences between Fortin and the present invention for the convenience of the examiner, seem to have been dismissed because the claims do not contain the distinctions *verbatim*, see Office Action, pages 3 and 4. Appellant, however, is fully aware that the "name of the game is the claim" (of which more to follow) and did not represent that every word in the explanation above was contained in the claims, although in fact all three independent claims require use of a single exit. Instead, Appellant was merely trying to help an evidently unwilling examiner understand technical differences before delving into the claims, an attempt that appears to have fallen on deliberately shut ears.

Nowhere does Fortin address the topic of enabling a single exit (*appearing in all independent claims*) to be used by multiple users. The portions of Fortin (elements 706, 720, and 722 in figure 7 "and associated text" and col. 5, lines 45-60 and col. 6, lines 19-67) that have been relied on for this teaching nowhere

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mention that multiple users use a single exit, much less hint at anything resembling the resolution of name ambiguity as claimed in the independent claims. Instead, element 706 is a line drawn from the entry section of the text of a stripped object to a common entry code in a library. Elements 720 and 722 are lines drawn between the common exit code in the library and a user-supplied exit routine, strongly implying just the opposite of what is claimed. The relied-upon part of col. 5 of Fortin discloses that an "entry is provided *for each target routine*", lines 48 and 49, and that a single entry and single exit routine are selected from plural routines, lines 53-55. Both of these teachings are strongly suggestive of an exit/entry being selected for a specific target routine, the opposite of multiple target routines using a single exit. Column 6 of Fortin adds to the teachings away noted above. In any case, nothing in the sections of Fortin that have been relied on for resolving name ambiguity and using a single exit for multiple users without such ambiguity in fact state anything of the sort.

This has been responded to by alleging that because Appellant used the term "common exit code", then the examiner is correct. This is absurd. Appellant nowhere asserted, because Fortin nowhere teaches, that the relied-upon portions of Fortin suggest a single exit for multiple users as claimed, nor has the examiner troubled to rebut (other than an unadorned repetition of the erroneous rejection) any of the technical observations made above regarding the elements 706, 20, and 722 of Fortin, which would have been a more appropriate response than a poorly played word game.

With respect to Baer, it appears that this reference bears little if any relevance to the present claims. The present inventor has reviewed the reference and has declared himself baffled by its import. Indeed, Baer is directed to storing complex objects in digital libraries and nowhere mentions user entry and exit routines, much less that its principles, which are intended to simplify storing and accessing things that are very much

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different from the routines of Fortin, can be used with such routines. The proffered motivation to combine has been made without regard to what the references fairly teach or suggest.

This has been responded to on page 4 of the Office Action with an irrelevancy, namely, an argument sounding in analogousness. It then descends into a series of "*id ests*" in trying to draw parallels between what the claims say and what the references actually teach, a device that is virtually always a red flag indicative of lurking hindsight reconstruction. The rejections merit reversal.

a(2). Obviousness Rejections, Claims 11 and 22

The arguments above apply *mutatis mutandis* to independent Claims 11 and 21, which nonetheless stand apart from Claim 1. The rejections merit reversal.

b. Obviousness Rejections, Claims 5-10, 15-20, and 25-30

Turning to Chan et al., it appears that this reference is directed to the construction and optimization of programs rather than control and flow, which is the key point in the present claims. Chan et al. appears to be run in preparation of actual program execution, not as an intercept routine that is run as part of the actual program execution.

Very explicit recitations in dependent claims have also been rejected based on citations in the references that seem to state nothing about the subject matter being rejected. By way of non-limiting example only, Claim 8 requires comparing a "candidate user-exit" load module to a predetermined interception routine "eye-catcher", and treating a non-matching "candidate user-exit" load module as a user exit routine, it being alleged that this is taught in Fortin, figures 3 and 7 and "associated text". On the contrary, figure 3 and its

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"associated text" (col. 4, lines 40-65) simply show and discuss a simple block diagram of how data is collected when a target routine is exited and entered. Figure 7 "and associated text" are of no further avail, because this portion of Fortin simply provides more data gathering details. There is simply no comparison of anything at all in the relied-upon portions of Fortin, much less the particularly recited comparison of, e.g., Claim 8.

This has been responded to on page 5 of the Office Action by an attempt to equate, for whatever reason, "demux entry inserting instructions" with "instrumentation code" and "target routines" with "transfer execution flow" despite absolutely no evidence of record or even cogent explanation being offered in support. Importantly to the Board because typically it is another red flag of impermissible hindsight, at the bottom of page 5 various allegations of "inherency" have been embarked on when it is not at all the case that the allegedly inherent features (of very highly technical nature) "necessarily" are in the references as alleged, see MPEP §2112, nor has the examiner even attempted to meet the burden imposed by part IV of §2112. The rejections merit reversal.

c. Section 101 Rejection

The Section 101 rejections fail to comprehend that Claim 21 must be interpreted in accordance with the principles of 35 U.S.C. §112, sixth paragraph, invoking means-plus-function language, MPEP §2181 to limit the claim to what is shown and described in the specification and structural equivalents thereto. With the proper legal test in mind, the defect in the allegation that the claim is not limited to a physical component or equivalent to a presumably statutory "medium" is laid bare. The present specification on page 4 plainly states that "the logic of the present invention can be contained on a data storage device with a computer


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readable medium, such as a computer diskette. Or, the instructions may be stored on a magnetic tape, hard disk drive, electronic read-only memory (ROM), optical storage device, or other appropriate data storage device or transmitting device thereby making a computer program product, i.e., an article of manufacture according to the invention....the flow charts illustrate the structures of computer program code elements including logic circuits on an integrated circuit, that function according to this invention. Manifestly, the invention is practiced in its essential embodiment by a machine component that renders the program elements in a form that instructs a digital processing apparatus (that is, a computer) to perform a sequence of function steps corresponding to those shown." All of these structures are statutory. None of the structures implicate "structural equivalents" that are not statutory. When properly interpreted under the sixth paragraph of Section 112 of the patent law and not merely tested by rote for inclusion of the talismanic word "medium", Claims 21-30 are statutory.

Respectfully submitted,



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APPENDIX A - APPEALED CLAIMS

1. A method for intercepting user exit interfaces in IMS programs, comprising:
 - installing a program library at an Information Management System (IMS) system server as the first library in an IMS program library concatenation, the program library including an interception routine;
 - dynamically loading an interface routine at the IMS system server;
 - wherein the interception routine communicates with the interface routine to resolve name ambiguity and enable simultaneous use of a single exit by plural users, and the method further comprises:
 - passing control from an IMS program at the IMS system server to the interface routine;
 - receiving control at the interception routine from the IMS program; and
 - establishing the interception routine as a user exit routine.
5. The method of Claim 1, further comprising:
 - obtaining the name of each library in an IMS program library concatenation at the interception routine.
6. The method of Claim 5, further comprising:
 - dynamically allocating each library in the IMS program library concatenation as a separately accessible file at the interception routine.

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7. The method of Claim 6, further comprising:
 - determining if any of the libraries includes a load module with the same name as the interface routine; and
 - flagging a first block of a matching load module as a "candidate user-exit."
8. The method of Claim 7, further comprising:
 - comparing a "candidate user-exit" load module to a predetermined interception routine "eye-catcher"; and
 - treating a non-matching "candidate user-exit" load module as a user exit routine.
9. The method of Claim 8, further comprising:
 - obtaining storage at the IMS system server;
 - bringing the user exit routine into memory; and
 - issuing a directed load for the user exit routine.
10. The method of Claim 9, further comprising:
 - passing control the user exit routine.
11. A system for intercepting user exist interfaces in IMS programs, comprising:
 - at least one IMS system server;

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at least one user computer communicating with the IMS system server;
an interface routine residing in the IMS system server;
an interception routine residing in the IMS system server;
wherein the interface routine and the interception routine include logic means for:
communicating between the interface routine and the interception routine to resolve
name ambiguity and enable simultaneous use of a single exit by plural users.

12. The system of Claim 11, wherein the interface routine and the interception routine further
include logic means for:

passing control from an IMS program at the IMS system server to the interface
routine.

13. The system of Claim 12, wherein the interface routine and the interception routine further
include logic means for:

receiving control at the interception routine from the IMS program.

14. The system of Claim 13, wherein the interface routine and the interception routine further
include logic means for:

establishing the interception routine as a user exit routine.

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15. The system of Claim 14, wherein the interface routine and the interception routine further include logic means for:

obtaining the names of the libraries in a IMS program library concatenation at the interception routine.

16. The system of Claim 15, wherein the interface routine and the interception routine further include logic means for:

dynamically allocating each library in the IMS program library concatenation as a separately accessible file at the interception routine.

17. The system of Claim 16, wherein the interface routine and the interception routine further include logic means for:

determining whether any of the libraries includes a load module with the same name as the interface routine; and

flagging a first block of a matching load module as a "candidate user-exit."

18. The system of Claim 17, wherein the interface routine and the interception routine further include logic means for:

comparing a "candidate user-exit" load module to a predetermined interception routine "eye-catcher;" and

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treating a non-matching "candidate user-exit" load module as a user exit routine.

19. The system of Claim 18, wherein the interface routine and the interception routine further include logic means for:

obtaining storage at the IMS system server;
bringing the user exit routine into memory; and
issuing a directed load for the user exit routine.

20. The system of Claim 19, wherein the interface routine and the interception routine further include logic means for:

passing control the user exit routine.

21. A computer program device for intercepting user exit interfaces in IMS programs, comprising:
logic means for communicating between an interception routine and an interface routine to resolve name ambiguity and enable simultaneous use of a single exit by plural users.

22. The computer program device of Claim 21, further comprising logic means for:

passing control from an IMS program at the IMS system server to the interface routine.

23. The computer program device of Claim 22, further comprising logic means for:

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receiving control at the interception routine from the IMS program.

24. The computer program device of Claim 23, further comprising logic means for:
establishing the interception routine as a user exit routine.
25. The computer program device of Claim 24, further comprising logic means for:
obtaining the names of the libraries in a IMS program library concatenation at the
interception routine.
26. The computer program device of Claim 25, further comprising logic means for:
dynamically allocating each library in the IMS program library concatenation as a
separately accessible file at the interception routine.
27. The computer program device of Claim 26, further comprising logic means for:
determining of any of the libraries includes a load module with the same name as the
interface routine; and
flagging a first block of a matching load module as a "candidate user-exit."
28. The computer program device of Claim 27, further comprising logic means for:

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comparing a "candidate user-exit" load module to a predetermined interception routine
"eye-catcher;" and
treating a non-matching "candidate user-exit" load module as a user exit routine.

29. The computer program device of Claim 28, further comprising logic means for:
- obtaining storage at the IMS system server;
 - bringing the user exit routine into memory; and
 - issuing a directed load for the user exit routine.
30. The computer program device of Claim 29, further comprising logic means for:
- passing control the user exit routine.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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